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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/632,436	08/01/2003	Michael F. Thomashow	21835-00004	3828

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EXAMINER	
KUMAR, VINOD	

ART UNIT	PAPER NUMBER
1638	

MAIL DATE	DELIVERY MODE
03/05/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No.	Applicant(s)	
	10/632,436	THOMASHOW ET AL.	
	Examiner	Art Unit	
	VINOD KUMAR	1638	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 13 February 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

a) ☐ The period for reply expires _____months from the mailing date of the final rejection.

b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because

(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);

(b) ☒ They raise the issue of new matter (see NOTE below);

(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: *None*.
Claim(s) objected to: _____.
Claim(s) rejected: *12,20-24 and 26-31*.
Claim(s) withdrawn from consideration: *9, 11, 17*.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.

12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____

13. ☐ Other: _____.

/Phuong T. Bui/
Primary Examiner, Art Unit 1638

Continuation of 11. does NOT place the application in condition for allowance because: (a) It is noted that Applicant has not addressed new matter rejection in their response. Written description rejection for new matter is not addressed. It is also noted that amendments to claim 12 and 26 do not overcome new matter related issues, (b) Applicant has not presented new arguments to traverse 102(b) rejection on record. It is thus maintained that Harper et al. disclose a transgenic plant, and a method of producing said plant comprising transforming a plant cell or plant with a DNA expression cassette, comprising a promoter (constitutive, inducible or tissue-specific) operably linked to a coding sequence of SEQ ID NO: 2316 (encoding a DNA binding protein RAV1) which has 100% sequence identity to instant SEQ ID NO: 1. The reference further discloses that over-expression of SEQ ID NO: 2316 induces stress tolerance in said transgenic plant, and wherein said stress includes freezing, drought and other types of environmental stresses. Furthermore, reference also discloses method steps of selecting or screening transgenic plants comprising SEQ ID NO: 2316 with improved abiotic stress tolerance for cold or dehydration. See in particular, page 2, paragraph 0012 and 0017; page 3, paragraph 0020; page 7; paragraph 0039; page 12, paragraph 0067; page 13, paragraph 0079; page 18, paragraph 0109, Also see, page 5, paragraph 0031, page 10, paragraph 0054. Also see, claims 29, 33, 35, 46, 47, 49, 51, 52, 53 and 55. Furthermore, Harper et al. also disclose plant cells or tissues susceptible to infection with Agrobacterium tumefaciens that contain and express a chimeric gene comprising a promoter operably linked to SEQ ID No: 2316 which has 100% sequence identity to instant SEQ ID NO: 1. See page 24 and paragraph 0145. The property of binding to a CAACA sequence is inherent to the polypeptide encoded by the nucleotide sequence disclosed by Harper et al. This is also evidenced by Kagaya et al. (page 478, first and second paragraph). It must be noted that the property of regulating cold and dehydration genes in a plant is also inherent to Harper et al's method which comprises expressing SEQ ID NO: 2316 encoding a transcription regulating protein in a transgenic plant. As discussed in detail in previous Office actions, the property of cold or drought tolerance is also inherent to the method disclosed by Harper et al. which clearly disclose a method of making a stress tolerant transgenic plant using SEQ ID NO: 2316, and selecting said transgenic plant on an abiotic stress, such as cold, dehydration, salt, drought etc. Also see In re Cruciferous Sprout Litig., 301 F.3d 1343,1346-48, 64 USPQ2d 1202, 1204-05 (Fed. Cir. 2002) where a claim at issue was directed to a method of preparing a food rich in glucosinolates wherein cruciferous sprouts are harvested prior to the 2-leaf stage. The court held that the preamble phrase "rich in glucosinolates" helps define the claimed invention, as evidenced by the specification and prosecution history, and thus is a limitation of the claim (although the claim was anticipated by prior art that produced sprouts inherently "rich in glucosinolates"). Furthermore, see Integra LifeSciences I Ltd. V. Merck KGaA 50 USPQ2d 1846, 1850 (DC Scalif 1999), which teaches that where the prior art teaches all of the required steps to practice the claimed method and no additional manipulation is required to produce the claimed result, then prior art anticipates the claimed invention. Accordingly, the rejection is maintained.